

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GENESIS GLOBAL CAPITAL, LLC and
GEMINI TRUST COMPANY, LLC,

Defendants.

No. 23-cv-287 (ER)

ANSWER

Pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, Defendant Gemini Trust Company, LLC (“Gemini”), through its undersigned counsel, hereby answers the Complaint of the Securities and Exchange Commission (the “SEC”), based upon actual knowledge as to itself and otherwise upon information and belief as to all other persons and events. All allegations not expressly admitted are denied, and Gemini reserves the right to amend, supplement, and/or revise this Answer.

To the extent the headings in the Complaint are construed as allegations, Gemini denies them. As for the specific allegations in the Complaint, Gemini responds as follows, using the SEC’s paragraph numbering:

1. Gemini denies the allegations in this Paragraph.
2. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis.¹ Gemini admits that it included information about the Gemini Earn program on its website and on social media, and denies the remaining allegations in this Paragraph.
3. Gemini admits that Gemini Earn users entered into a Master Digital Asset Loan

¹ Defendant Genesis settled with the SEC and Gemini is the sole remaining Defendant. On March 18, 2024, a Final Judgment has been entered approving Consent Judgment as to Genesis. *See* ECF No. 45.

Agreement. The Master Digital Asset Loan Agreement is a writing, and Gemini refers to that writing for its complete contents. Any attempt to characterize the terms of the writing is denied. Gemini denies the remaining allegations in this Paragraph.

4. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis.

5. Gemini denies the allegations in this Paragraph.

6. Gemini denies the allegations in this Paragraph, except admits that it did not file a registration statement with the SEC with respect to the Master Digital Asset Loan Agreements because the Master Digital Asset Loan Agreements are not securities, and no such registration statement was required.

7. Gemini denies the allegations in this Paragraph. To the extent the allegations in the Paragraph refer to a writing, Gemini refers to that writing for its complete contents. Any attempt to characterize the terms of the writing is denied. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis.

8. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini admits that it continues to operate a business involved in the cryptocurrency industry. It denies the remaining allegations in this Paragraph.

9. Gemini denies the allegations in this Paragraph.

10. Gemini denies the allegations in this Paragraph.

11. This Paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

12. This Paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

13. This Paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

14. This Paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

15. This Paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

16. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis.

17. Gemini admits that it is a New York limited purpose trust company founded in 2014, that its principal place of business is in New York, New York, that it is registered with the New York Department of Financial Services as a New York limited purpose trust company, and that as stated in its Rule 7.1 disclosure it is owned by Gemini Spaceship, LLC, which is majority owned by Gemini Space Station, LLC, which in turn is majority owned by Winklevoss Capital Fund, LLC. The remainder of this Paragraph sets forth legal conclusions to which no response is required.

18. This Paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

19. This Paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

20. This Paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

21. Gemini admits that the term “crypto asset” generally refers to an asset that uses distributed ledger or blockchain technology, including assets that are sometimes referred to as

“cryptocurrencies,” “coins,” and “tokens.”

22. Gemini admits that a blockchain or distributed ledger generally refers to a peer-to-peer database spread across a network of computers that records all transactions in theoretically unchangeable, digitally recorded data packages. Gemini admits that generally the system relies on cryptographic techniques for secure recording of transactions.

23. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

24. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. This Paragraph refers to a writing, and Gemini refers to that writing for its complete contents. Any attempt to characterize the terms of the writing is denied. Gemini denies the remaining allegations in this Paragraph.

25. Gemini admits in part and denies in part the allegations in this Paragraph. Gemini admits that beginning in February 2021, the Gemini Earn program was made available to certain Gemini users. Gemini denies the remaining allegations in this Paragraph.

26. Gemini admits in part and denies in part the allegations in this Paragraph. Gemini admits Gemini Earn users entered into a Master Digital Asset Loan Agreement. The Master Digital Asset Loan Agreement is a writing, and Gemini refers to that writing for its complete contents. Any attempt to characterize the terms of the writing is denied. Gemini denies the remaining allegations in this Paragraph.

27. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. To the extent the Paragraph includes allegations in reference to the Master Digital Asset Loan Agreement, Gemini refers to that writing for its complete contents. Any attempt to characterize the terms of the writing is denied. Gemini denies the remaining allegations

in the Paragraph.

28. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. To the extent the Paragraph includes allegations in reference to the Master Digital Asset Loan Agreement, Gemini refers to that writing for its complete contents. Any attempt to characterize the terms of the writing is denied. Gemini admits that it set the Agent Fees, as defined and described in the Gemini Earn Program Terms and Authorization Agreement. Gemini denies the remaining allegations in the Paragraph.

29. Gemini admits in part and denies in part the allegations in this Paragraph. Gemini admits that Gemini published a list of crypto assets eligible for the Gemini Earn program and the associated interest rates on its website as well as its mobile application, and refers to those writings for their complete contents, including which specific assets were eligible at which specific times. Any attempt to characterize the terms of the writings is denied. Gemini denies the remaining allegations in this Paragraph.

30. Gemini admits in part and denies in part the allegations in this Paragraph. Gemini admits that during October 2022, the net interest rate offered to Gemini Earn users ranged from 0.45% to 8.05%, and that Gemini's agent fee ranged from 0.06% to 4.29%, depending on the type of crypto asset. Gemini admits that, for the three months ended March 31, 2022, Gemini received approximately \$2.7 million in agent fees from the Gemini Earn program. Gemini denies the remaining allegations in this Paragraph.

31. This Paragraph refers to the Master Digital Asset Loan Agreement, and Gemini refers to that writing for its complete contents. Any attempt to characterize the terms of the writing is denied. Gemini denies the remaining allegations in this Paragraph.

32. This Paragraph refers to the Master Digital Asset Loan Agreement, and Gemini

refers to that writing for its complete contents. Any attempt to characterize the terms of the writing is denied. Gemini denies the remaining allegations in this Paragraph.

33. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

34. This Paragraph refers to various writings, and Gemini refers to those writings for their complete contents. Any attempt to characterize the terms of those writings is denied. Gemini denies the remaining allegations in this Paragraph.

35. This Paragraph refers to a writing, and Gemini refers to that writing for its complete contents. Any attempt to characterize the terms of the writing is denied. Gemini denies the remaining allegations in this Paragraph.

36. This Paragraph refers to a writing, and Gemini refers to that writing for its complete contents. Any attempt to characterize the terms of the writing is denied. Gemini denies the remaining allegations in this Paragraph.

37. Gemini admits that its website included a Gemini Earn-related calculator feature.

38. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. This Paragraph also refers to the Master Digital Asset Loan Agreement, and Gemini refers to that writing for its complete contents. Any attempt to characterize the terms of the writing is denied. Gemini denies the remaining allegations in this Paragraph.

39. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

40. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

41. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

42. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

43. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

44. This Paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

45. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

46. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

47. Gemini lacks information or knowledge sufficient to form a belief as to the intentions or understanding of Gemini Earn program participants. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. To the extent the allegations in the Paragraph refer to a writing, Gemini refers to that writing for its complete contents. Any attempt to characterize the terms of the writing is denied. Gemini denies the remaining allegations in this Paragraph.

48. Gemini lacks information or knowledge sufficient to form a belief as to the intentions or understanding of Gemini Earn program participants. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

49. Gemini admits in part and denies in part the allegations in this Paragraph. Gemini

admits that it included information about the Gemini Earn program on its website and social media and refers to those writings for their complete contents. Any attempt to characterize the terms of those writings is denied. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

50. Gemini admits that it included information about the Gemini Earn program on its website and social media and refers to those writings for their complete contents. Any attempt to characterize the terms of those writings is denied. Gemini denies the remaining allegations in this Paragraph.

51. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. This Paragraph also sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

52. Gemini admits in part and denies in part the allegations in this Paragraph. Gemini admits it is registered with NYSDFS as a New York limited purpose trust company. This Paragraph also refers to a writing, and Gemini refers to that writing for its complete contents. Any attempt to characterize the terms of the writing is denied. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

53. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

54. This Paragraph refers to writings, and Gemini refers to those writings for their complete contents. Any attempt to characterize the terms of those writings is denied. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

55. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. This Paragraph also sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

56. This Paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

57. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. This Paragraph also sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

58. This Paragraph sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

59. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. This Paragraph also sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

60. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. This Paragraph also sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

61. Gemini lacks information or knowledge sufficient to form a belief as to the intentions or understanding of Gemini Earn program participants. This Paragraph also sets forth legal conclusions to which no response is required. To the extent a response is required, Gemini denies the allegations in this Paragraph.

62. This Paragraph refers to writings, and Gemini refers to those writings for their complete contents. Any attempt to characterize the terms of those writings is denied. Gemini denies the remaining allegations in this Paragraph.

63. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

64. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis or as to the intentions or understanding of Gemini Earn program participants. Gemini denies the remaining allegations in this Paragraph.

65. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini denies the remaining allegations in this Paragraph.

66. Gemini lacks information or knowledge sufficient to form a belief as to the intentions or understanding of Gemini Earn program participants. Gemini denies the remaining allegations in this Paragraph.

67. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis or as to the intentions or understanding of Gemini Earn program participants. Gemini denies the remaining allegations in this Paragraph.

68. Gemini denies the allegations in this Paragraph.

69. Gemini denies the allegations in this Paragraph.

70. Gemini denies the allegations in this Paragraph, except admits that it did not file a registration statement with the SEC with respect to the Master Digital Asset Loan Agreements because the Master Digital Asset Loan Agreements are not securities, and no such registration statement was required.

71. Gemini lacks information or knowledge sufficient to form a belief as to the allegations against Genesis. Gemini lacks information or knowledge sufficient to form a belief as to the intentions or understanding of Gemini Earn program participants. Gemini denies the remaining allegations in this Paragraph.

72. Gemini incorporates its answers to each preceding Paragraph as though fully set forth herein.

73. Gemini denies the allegations in this Paragraph.

74. Gemini denies the allegations in this Paragraph.

AFFIRMATIVE DEFENSES

Gemini alleges, asserts, and states the following defenses as separate and distinct defenses to the Complaint. By virtue of alleging these further defenses, Gemini does not assume any burden of proof, persuasion, or production not otherwise legally assigned to it.

FIRST DEFENSE: THE GEMINI EARN PROGRAM IS NOT A SECURITY

Gemini did not violate Section 5 of the Securities Act because neither the Gemini Earn program nor the Master Digital Asset Loan Agreement is a security or “investment contract.” No registration was required in connection with the Gemini Earn program or the Master Digital Asset Loan Agreement.

SECOND DEFENSE: GEMINI IS NOT A STATUTORY SELLER

Gemini did not violate Section 5 of the Securities Act because Gemini is not a “statutory seller” under the Securities Act.

THIRD DEFENSE: NO LIKELIHOOD OF FUTURE VIOLATIONS

The relief requested in the Complaint is inappropriate, in whole or in part, because the Complaint fails to allege a reasonable likelihood of future violations by Gemini.

FOURTH DEFENSE: LACK OF DUE PROCESS AND FAIR NOTICE

Gemini did not have, and the SEC failed to provide, fair notice that its conduct was in violation of law, in contravention of Gemini’s due process rights. Due process requires that laws give a person of ordinary intelligence a reasonable opportunity to know what is prohibited. Here, due to the lack of clarity and fair notice regarding Gemini’s obligations under the law, in addition

to the lack of clarity and fair notice regarding the SEC's interpretation of the law, Gemini lacked fair notice that its conduct was prohibited.

FIFTH DEFENSE: LACK OF EXTRATERRITORIAL AUTHORITY

The SEC lacks extraterritorial authority over all or some of the transactions alleged in the Complaint that took place outside the United States.

SIXTH DEFENSE: MAJOR QUESTIONS DOCTRINE

The enforcement action should be dismissed, and the SEC's claims should be barred, because the SEC has exceeded its enforcement power under the "major questions" doctrine, *see W. Va. v. EPA*, 142 S. Ct. 2587, 2609 (2022).

RESERVATION OF RIGHTS

Gemini presently has insufficient knowledge and information upon which to form a belief as to whether there may be other, as yet unstated, defenses available to Gemini, and therefore expressly reserves, in accordance with applicable law, the right to amend or supplement its Answer, defenses and all other pleadings, and the right to assert any and all other additional and further defenses as appropriate, including defenses that may be revealed by discovery or otherwise.

Dated: New York, New York
March 27, 2024

BAUGHMAN KROUP BOSSE PLLC

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